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EXAMINER

KEENAN, JAMES W

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD D. ZAUN, RICHARD W. HOOK, JOHN D. LONG,
JOHN OVERBEEKE, BRUCE L. WARMAN, GREGORY M. KNOTT,
JOHN M. ROBINSON, CHRISTOPHER G. KAY, MARK GUTERMAN,
DMITRY I. SPIVAK, THOMAS E. SPARROW,
JOHN A. MADSON and JON AMBUEHL

Appeal 2007-4398
Application 10/698,147
Technology Center 3600

Decided: March 24, 2008

Before: TERRY J. OWENS, JENNIFER D. BAHR and
STEVEN D.A. McCARTHY, *Administrative Patent Judges.*

McCARTHY, *Administrative Patent Judge*

DECISION ON APPEAL

1 The Appellants appeal under 35 U.S.C. § 134 (2002) from the final
2 rejection of claims 1 and 3 under 35 U.S.C. § 102(b) (2002) as being
3 anticipated by Musil (U.S. Patent 5,100,277) and claims 2 and 4-6 under
4 35 U.S.C. § 103(a) (2002) as being unpatentable over Musil. The claims on
5 appeal relate to an apparatus of a type which might be used to fill a freight
6 container with farm products at the point of harvest directly from a combine
7 or other harvesting machine. (Spec. 15, ¶ 0048). Claim 1 recites:

- 8
9 1. Apparatus for transporting and filling freight
10 containers, each of the containers having an
11 opening therein, the apparatus comprising:
12 a chassis supported by ground
13 engaging transport elements;
14 a hopper having an open upper end
15 and a lower outlet;
16 a conveyor having proximal and distal
17 ends, the conveyor disposed beneath the hopper
18 outlet for receiving material from the hopper, the
19 conveyor moving material away from the hopper
20 outlet to the distal end;
21 a container chassis supporting a
22 removable freight container, the freight container
23 having an opening so as to receive material that is
24 to be loaded by the conveyor into the container;
25 and
26 the chassis including a hitch to couple
27 the chassis to the container chassis.
28

29 Claims 2-6 depend from claim 1. We have jurisdiction under 35
30 U.S.C. § 6(b) (2002).

31 We REVERSE.

1 The determinative issue in this appeal is whether Musil discloses or
2 teaches an apparatus including a container chassis supporting a removable
3 container. Musil discloses a road finishing machine including a paver
4 preceded by a direct dump material transfer and elevating apparatus. (Musil,
5 col. 3, ll. 52-56 and col. 4, ll. 14-17). The paver includes a wheeled or
6 endless track frame. The reference teaches that, “[o]n such frame 17, there
7 is supported a front material feed hopper 18.” (Musil, col. 3, ll. 60-65).

8 With respect to claims 1 and 3, the Examiner finds that “the container 18 is
9 considered a ‘removable freight container,’ as broadly claimed, even though
10 no particular removing structure is disclosed.” (Ans. 3).

11 In support of this contention, the Examiner concludes that the
12 limitation of a “removable freight container,” when given its broadest
13 reasonable interpretation:

14
15 does not require the container to be removable
16 from anything in particular, much less in any
17 particular manner. While it is highly likely that the
18 container of Musil is indeed removable in some
19 way from the frame 17 (chassis), even if it isn’t, it
20 still meets the claim recitation because it is clearly
21 “removable” at least from the conveyor by virtue
22 of the hitch 29.
23

24 (Ans. 5). The Appellants contest this claim construction. (Br. 5).

25 We conclude that the broadest reasonable interpretation of the phrase
26 “removable freight container” requires that the freight container be
27 removable from the container chassis. Looking to the claim language itself,
28 the phrase “removable freight container” is recited in the same clause which
29 recites the support of the container by the container chassis and in a clause

1 separate from that which recites the hitch between the container chassis and
2 the chassis carrying the conveyor. This juxtaposition suggests that the
3 phrase “removable freight container” is intended to require removability
4 from the container chassis rather than from the conveyor or the chassis
5 carrying the conveyor.

6 “During examination, ‘claims . . . are to be given their broadest
7 reasonable interpretation consistent with the specification’ *In re*
8 *American Acad. of Science Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)
9 (quoting *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990)). In each instance
10 where the specification refers to “remov[ing]” the container, the present
11 specification refers to removing the container from the chassis which
12 supports the container. (*E.g.*, Spec. 3, ¶0007, ll. 12-13; Spec. 11, ¶ 0037, ll.
13 8-11; and Spec. 13, ¶ 0042, ll. 4-5). Although the present specification
14 describes a notoriously demountable hitch connecting the chassis carrying
15 the conveyor with the chassis carrying the container, we note that the
16 specification does not describe *removing* the *container* (as opposed to
17 unhitching the chassis carrying it) from the opposite chassis. To this extent,
18 an interpretation of the phrase “removable freight container” that is broad
19 enough to encompass a container which is (1) supported by a chassis which
20 may be unhitched from the conveyor but which is (2) irremovable from the
21 chassis supporting that container would be inconsistent with the disclosure
22 of the present specification.

23 In addition, the “Background of the Invention” frames the claimed
24 subject matter in the context of segregating farm products throughout the
25 transportation system by containerizing the products at the harvesting site.
26 (*See* Spec. 2, ¶ 0005). The remainder of the description is consistent with

1 this context. (*E.g.*, Spec. 9-10, ¶¶ 0031; 11, ¶ 0037; and 15, ¶ 0048). This
2 context suggests interpreting the phrase “removable freight container” as a
3 container removable from the chassis supporting the container. *See Nystrom*
4 *v. Trex Co.*, 424 F.3d 1136, 1143-44 (Fed. Cir. 2005) (interpreting claims
5 within context in which the written description was framed). If the container
6 were not removable from a chassis supporting it, the container likely would
7 prove an inefficient means for containing and segregating farm products
8 throughout the transportation system including transportation by air or
9 water. Consequently, we believe that any interpretation of the phrase
10 “removable freight container” which does not require that the container be
11 removable from the chassis which supports the container would be
12 inconsistent with the present specification.

13 The Examiner concedes that Musil does not disclose that the feed
14 hopper 18 is removable from the wheeled or endless track frame 17. Since
15 the Examiner has not identified any other structure which might correspond
16 to the “removable freight container,” we conclude that the Appellants have
17 shown that the Examiner erred in rejecting claims 1 and 3 under section
18 102(b).

19 With respect to dependent claims 2 and 4-6, we disagree for the
20 reasons previously stated with the Examiner’s finding that Musil’s feed
21 hopper 18 is a “removable freight container” as that phrase is used in claim
22 1. The Examiner has not articulated any reason sufficient to show that one
23 of ordinary skill in the art would have found it obvious to modify Musil’s
24 paver so that the feed hopper 18 is removable from the wheeled or endless
25 track frame 17. We conclude that the Appellants have shown that the
26 Examiner erred in rejecting claims 2 and 4-6 under section 103(a).

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CONCLUSION OF LAW

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On the record before us, the Appellants have shown that the Examiner erred in rejecting claims 1 and 3 under section 102(b) as being anticipated by

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Musil. On the same record, the Appellants also have shown that the

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Examiner erred in rejecting in rejecting claims 2 and 4-6 under section

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103(a) as being unpatentable over Musil.

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DECISION

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We reverse the rejections of claims 1-6.

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REVERSED

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